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Belle Chasse Marine Transportation, LLC  
5813 Citrus Blvd., Ste. 200  
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Belle Chasse Marine Transportation, LLC  
c/o Gordon Konrad, Registered Agent  
5813 Citrus Blvd., Ste. 200  
Harahan, LA 70123

Re: Notice of Intent to File Citizen Suit Under Section 505(b)(1) of the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1365(b)

Dear Mssrs. and Ms. Konrad:

This letter is to give you notice that the Louisiana Environmental Action Network, Inc. ("LEAN") and the Lower Mississippi Riverkeeper ("LRM") intend to sue Belle Chasse Marine Transportation, LLC ("Belle Chasse Marine") for five years of chronic violations of the terms of its discharge permits issued under the Louisiana Pollution Discharge Elimination System ("LPDES permits"). These violations relate to Belle Chasse Marine's Ama Launch Station at 153 W Third St, Kenner, LA. The violations remain ongoing and constitute violations of sections 301, and 402 of the federal Clean Water Act, 33 U.S.C. §§ 1311, 1342.

Pursuant to Belle Chasse Marine's permits, the company is prohibited from discharging wastewater into the Mississippi River except in compliance with the permits' terms. In particular, in order to protect public health and the environment, the permits contain maximum limits for various constituents such as biochemical oxygen demand ("BOD"), total suspended solids ("TSS"), oil and grease ("O&G"), and fecal coliform, and both maximum and minimum limits for pH levels, as set by the Louisiana Department of Environmental Quality. Likewise, the permit requires regular and accurate monitoring and reporting associated with these constituents. Moreover, in order to ensure proper compliance, the permit requires Belle Chasse Marine to practice proper operations and maintenance, which necessarily include proper staff training concerning monitoring and reporting requirements.

By repeatedly violating the terms of its LPDES permits related to sampling frequency and proper reporting of violations, and by discharging wastewater containing levels of pollutants

higher than those allowed, Belle Chasse Marine is in violation of the Clean Water Act and must take immediate action to come into compliance.

## **I. Identity of Complainants**

### **A. Louisiana Environmental Action Network, Inc.**

LEAN is a Baton Rouge-based umbrella organization established to promote and protect the health of Louisiana's natural environment for the use and enjoyment of the people of Louisiana. In executing its purpose, LEAN ensures that the laws and regulations of the State, intended to preserve and enhance its natural resources and environmental quality, are diligently followed in letter and in spirit. LEAN has a particular interest in the preservation and restoration of water quality in the rivers and streams of Louisiana, and in protecting its members from exposure to public health risks. In addition, LEAN's interest in water quality flows directly from the personal interests of its members who own property, live, and/or work adjacent to the affected portion of the Mississippi River, and who use those waters that receive the contaminated discharges from Belle Chasse Marine's facility for recreation, boating, swimming, and aesthetic enjoyment. Water pollution and threats to water quality from Belle Chasse Marine's facility and its repeated violation of its permit directly harm these members of LEAN. LEAN can be reached as follows:

Louisiana Environmental Action Network, Inc.  
P.O. Box 66323  
Baton Rouge, LA 70896  
Phone: (225) 928-1315

### **B. Lower Mississippi RIVERKEEPER®**

The Lower Mississippi RIVERKEEPER® ("LMR") works with local communities to address the polluted state of the Mississippi River, which travels through 31 states and drains 2,350 square miles, making it one of the most endangered rivers in the United States. LMR energizes current activists to participate in environmental decisions, and educates the public and government leaders about environmental challenges and economic opportunities regarding the Mississippi River and how reduced water pollution benefits everyone. As part of its work, LMR monitors water quality, investigates reported pollution-related incidents, and seeks to compel polluters to comply with the Clean Water Act to reduce pollution in the River for the benefit of surrounding communities' health and the health of the environment. LMR is a member of LEAN.

Additionally, LMR is part of the international Waterkeeper Alliance, which provides a way for communities to stand up for their right to clean water and for the wise and equitable use of water resources, both locally and globally. The vision of the Waterkeeper movement is for fishable, swimmable and drinkable waterways worldwide, which the organization seeks to achieve through grassroots advocacy.

Members of LMR own property, live, and/or work adjacent to the affected portions of the



Mississippi River, and use those waters that receive the contaminated discharges from Belle Chasse Marine's facility for recreation, boating, swimming, and aesthetic enjoyment. Water pollution and threats to water quality from Belle Chasse Marine's facility and its repeated violation of its permit directly harm these members of LMR. LMR can be reached as follows:

Lower Mississippi RIVERKEEPER®  
c/o The Louisiana Environmental Action Network  
P.O. Box 66323  
Baton Rouge, LA 70896  
Phone: 225-928-1315

## **II. Effect of the Violations on Public Resources**

The LPDES permits allow Belle Chasse Marine to discharge limited quantities of pollutants into the Mississippi River. As LMR recognizes:

The Mississippi River Basin is home to 1.5 million people, and over 350 industrial and municipal facilities are located adjacent to the River within the state of Louisiana. Approximately 175 of these facilities discharge wastewater into the river under the authority of state/federal permits, and of these approximately 120 facilities are located between Baton Rouge and New Orleans. Noncompliance with wastewater discharge permits by a large number of facilities along the River is widespread . . . In addition to the industrial pollution[,] when the Mississippi River flows into Louisiana it already contains a variety of chemicals including the herbicide Atrazine, which originates in stormwater runoff from agricultural fields in mid-western states and presents a potential health hazard. This places a particular burden on the Communities from Ascension Parish to the mouth of the Mississippi River that use surface water as their only source of drinking water.<sup>1</sup>

Thus, any permit violations by Belle Chasse Marine cannot be viewed in isolation but also have a deleterious cumulative effect on the health of the Mississippi River and neighboring communities. Each violation compounds the preexisting threat to the residents and environment of the lower Mississippi River, which is impaired due to the activities of many industrial and agricultural users.

## **III. Legal Overview**

Section 301 of the Clean Water Act prohibits the "discharge of any pollutant by any person" without proper authorization, such as in compliance with the terms of a permit issued under Section 402. 33 U.S.C. § 1311(a). Section 402 establishes the National Pollutant Discharge Elimination System, a permitting program regulating the discharge of pollutants by industrial facilities, and provides for the issuance of such permits by individual States. 33 U.S.C. § 1342(h). In Louisiana, the issuance of such permits (known as LPDES permits) has been delegated to the Louisiana Department of Environmental Quality.

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<sup>1</sup> <http://lmrk.org/the-mississippi-river/>

Belle Chasse Marine's conduct is governed by the terms of the Class I Sanitary Discharge General Permit (General Permit No. LAG530000; Authorization No. LAG531132), along with facility-specific Effluent Limitations and Monitoring Requirements established in Appendix A ("Sanitary Discharge permit"). During the five-year period of time covered by this notice, two different versions of the Sanitary Discharge permit applied to Belle Chasse Marine's activities. The first version took effect December 1, 2007 and governed until superseded by the current permit, effective December 1, 2012. Additionally, as a permitted sanitary wastewater treatment facility, Belle Chasse Marine automatically became a permittee under the Louisiana Sewage Sludge and Biosolids Use or Disposal Permit (No. LAJ660000), effective January 1, 2013 ("Sewage Sludge permit"). Part III.A.2 of the applicable permits mandate compliance "with all conditions," making any noncompliance a violation of both the Clean Water Act and the Louisiana Environmental Quality Act.

Congress provided for enforcement of the discharge limitations in the Clean Water Act through citizen suits like the potential suit noticed in this letter. Title 33 U.S.C. § 1365 permits a citizen to bring a claim for a violation of any effluent standard or limitation under the Act. Violation of an LPDES permit is a violation of an effluent standard or limitation and is actionable under the citizen suit provision of the Clean Water Act.

#### **IV. Specific Violations**

Over the past five years, Belle Chasse Marine has violated its Sanitary Discharge permit in a number of respects with regard to Outfall 001, including (A) violation of effluent limitations and (B) sampling violations; and has violated its Sewage Sludge permit by (C) failing to comply with annual reporting. Moreover, Belle Chasse Marine has violated both permits by (D) failing to employ best management practices in facility operations.

##### **A. Belle Chasse Marine has repeatedly violated the numerical effluent limitations applicable to Outfall 001.**

Both iterations of the applicable Sanitary Discharge permit have required monitoring of Outfall 001, "[t]reated sanitary wastewater" (i.e., human waste), including half-yearly sampling for flow, BOD, TSS, O&G, fecal coliform, and pH level. The following chart shows Belle Chasse Marine's violation of effluent limitations at Outfall 001 over the past five years. Each day of violation during the period in which Belle Chasse Marine has been responsible for the facility constitutes a separate violation of the Clean Water Act. Please note that when reporting is semi-annual, each violation of a parameter constitutes a separate violation of that parameter for each day of the semi-annual period, or until the next valid test result demonstrating compliance is submitted.



<u>Monitoring Period</u>	<u>Constituent</u>	<u>Numerical Standard</u>	<u>Sampling Result</u>	<u>Days in Violation</u>
07/01/2013-12/31/2013	BOD	45	129	184
07/01/2013-12/31/2013	TSS	45	132	184
07/01/2014-12/31/2014	BOD	45	65.4	184
07/01/2014-12/31/2014	Fecal Coliform	400	1000	184
07/01/2015-12/31/2015	BOD	45	178	184
07/01/2015-12/31/2015	TSS	45	255	184
07/01/2015-12/31/2015	Fecal Coliform	400	1000	184
07/01/2015-12/31/2015	Minimum pH	6	5.62	184
07/01/2016-12/31/2016	BOD	45	401	184
07/01/2016-12/31/2016	TSS	45	532	184
	<b>Total Numerical Violations at Outfall 001</b>	<b>10</b>	<b>Total Days In Violations at Outfall 001</b>	<b>1,840</b>

Compliance with numerical standards is essential to avoiding actual harm to the Mississippi River, surrounding environment, and neighboring communities. Additionally, monitoring for these constituents, in particular, is important due to the potential risk to human health and aquatic life posed by human waste.

For example, fecal coliform is an indicator of bacterial sewage contamination. Elevated TSS levels can lead to decreased photosynthesis and water clarity and increased water temperatures, which are harmful to the health of aquatic habitats. Suspended solids can also clog fish gills.<sup>2</sup> Additionally, BOD “measures the amount of oxygen consumed by microorganisms in decomposing organic matter in stream water,” and “the chemical oxidation of inorganic matter (i.e., the extraction of oxygen from water via chemical reaction) . . . The greater the BOD, the more rapidly oxygen is depleted in the [waterbody]. This means less oxygen is available to higher forms of aquatic life. The consequences of high BOD are the same as those for low dissolved oxygen: aquatic organisms become stressed, suffocate, and die.”<sup>3</sup> Moreover, “[e]xtremes in pH can make a river inhospitable to life. Low pH is especially harmful to

<sup>2</sup> <http://www.fondriest.com/environmental-measurements/parameters/water-quality/turbidity-total-suspended-solids-water-clarity/#Turbid5>

<sup>3</sup> <https://archive.epa.gov/water/archive/web/html/vms52.html>

immature fish and insects. Acidic water also speeds the leaching of heavy metals harmful to fish.”<sup>4</sup>

**B. Belle Chasse Marine has repeatedly failed to sample Outfall 001 at the required frequency.**

Part III.D.4 of this permit requires that “[m]onitoring results shall be reported at the intervals and in the form specified[.]” In turn, Part II.X requires reports be submitted on an EPA form No. 3320-1 or approved substitute, which contains language for the principal executive officer or authorized agent to “certify under penalty of law that . . . the information submitted is . . . true, accurate, and complete.” The reports are due “no later than the 28th day of the month following the reporting period.” (*Id.*)

A review of the limited discharge monitoring reports submitted by Belle Chasse Marine under penalty of law and publicly available through LDEQ’s Electronic Document Management System (“EDMS”) shows that Belle Chasse Marine failed to submit reports on multiple occasions, amounting to the following sampling-frequency violations:

<u>Monitoring Period</u>	<u>Constituent</u>	<u>Required Frequency</u>	<u># Violations</u>	<u>Days In Violation</u>
01/01/2012-06/30/2012	BOD	1/6 months	1	182
01/01/2012-06/30/2012	TSS	1/6 months	1	182
01/01/2012-06/30/2012	O&G	1/6 months	1	182
01/01/2012-06/30/2012	Fecal Coliform	1/6 months	1	182
01/01/2012-06/30/2012	pH (min/max)	1/6 months	1	182
07/01/2012-12/31/2012	BOD	1/6 months	1	182
07/01/2012-12/31/2012	TSS	1/6 months	1	182
07/01/2012-12/31/2012	O&G	1/6 months	1	182
07/01/2012-12/31/2012	Fecal Coliform	1/6 months	1	182
07/01/2012-12/31/2012	pH (min/max)	1/6 months	1	182
01/01/2013-06/30/2013	BOD	1/6 months	1	182
01/01/2013-06/30/2013	TSS	1/6 months	1	182
01/01/2013-06/30/2013	O&G	1/6 months	1	182
01/01/2013-06/30/2013	Fecal Coliform	1/6 months	1	182
01/01/2013-06/30/2013	pH (min/max)	1/6 months	1	182
01/01/2013-06/30/2013	BOD	1/6 months	1	182
07/01/2013-12/31/2013	pH (min)	1/6 months	1	182
		<b>Total Number of Violations over Five-Year Period</b>	<b>17</b>	<b>Total Days in Violation 3,094</b>

<sup>4</sup> <https://www.grc.nasa.gov/www/k-12/fenlewis/Waterquality.html>



Proper sampling is necessary to provide an accurate picture of Belle Chasse Marine's compliance or lack of compliance with the numerical discharge limits contained within its Sanitary Discharge permit. Both versions of the permit have contained monthly and weekly average limitations for BOD, TSS, O&G, and fecal coliform, along with minimum and maximum instantaneous daily values for pH. Each and every exceedance is a violation of the permit. When Belle Chasse Marine fails to monitor, it becomes impossible to determine Belle Chasse Marine's compliance for that 6-month cycle. An exceedance that occurred during an interval that Belle Chasse Marine failed to sample would go unnoticed and unreported. Any resulting harm to the environment would go unmitigated, and the public would receive no health-and-safety warning to limit their use of the affected river.

According to the NPDES Permit Writers Manual, more frequent monitoring is especially important where there is "[a] highly variable discharge" with regard to pollutant concentration and flow.<sup>5</sup> Belle Chasse Marine's discharges at Outfall 001 have shown high variability over the five-year period at issue. For example, reported daily maximums for fecal coliform have ranged from non-detect to 1000. Likewise, "[a] facility with problems achieving compliance generally should be required to perform more frequent monitoring to characterize the source or cause of the problems or to detect noncompliance." *Id.* Belle Chasse Marine has a history of noncompliance with numerical effluent limitations (see above), which further illustrates the importance of proper monitoring and the seriousness of its failure-to-sample violations.

**C. Belle Chasse Marine has repeatedly failed to submit annual reports with regard to its sewage sludge.**

A requirement of the Sewage Sludge permit is for annual reports that specify under penalty of law (1) "[t]he annual amount of sewage sludge that is pumped out or removed from the sanitary wastewater treatment works" or a notation of "No Sewage Sludge Removed"; and (2) "[t]he name and address of the sewage sludge transporter that pumped out or removed the sewage sludge from the sanitary wastewater treatment works," if any. The reports are due January 28 of each year on Form 7264 as an attachment to the annual monitoring report associated with the Sanitary Discharge permit. A review of LDEQ's EDMS database indicates that Belle Chasse Marine has failed to submit the following reports:

<b>Date Due</b>	<b>Status</b>
01/28/2014	No record of submission
01/28/2015	No record of submission
01/28/2016	No record of submission
01/28/2017	No record of submission
<b>Total number of missing reports: 4</b>	

Without proper reporting it is impossible for LDEQ and concerned citizens to form an accurate picture of Belle Chasse Marine's compliance or lack of compliance with all substantive permit conditions associated with the management of sewage sludge.

<sup>5</sup> NPDES Permit Writers Manual 8.1.3 (September 2010).

**D. Belle Chasse Marine's pattern or practice of the above-described violations over the past five years reflects further permit<sup>6</sup> violations related to best management practices.**

The fact that Belle Chasse Marine has repeatedly committed violations of the same provisions at the same outfalls over the past five years is also evidence of the following violations:

1. Failure to "take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment," and to "take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge" (LPDES Permits, Part III.B.2, Duty to Mitigate)—especially with regard to the numerical exceedances described above;
2. Failure to "at all times properly operate and maintain all facilities and systems of treatment and control" (LPDES Permits, Part III.B.3.a, Proper Operation and Maintenance)—especially with regard to improper sampling and reporting and inadequate treatment of sanitary wastewater prior to discharge; and
3. Failure to ensure "adequate operating staff which is duly qualified" in the areas of permit monitoring and compliance (LPDES Permits, Part III.B.3.b, Proper Operation and Maintenance)—especially with regard to training personnel in proper sampling and reporting procedures.

**V. Remedies**

In accordance with Section 505(b) of the Act, 33 U.S.C. § 1365(b), LEAN and LMR hereby give formal notice of their intent to file suit against Belle Chasse Marine in federal court, after the expiration of 60 days from the date of this notice. Copies of this notice are being provided to the State of Louisiana, through its Department of Environmental Quality, the U.S. Department of Justice, and the United States Environmental Protection Agency.

Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the regulation allowing for the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects Belle Chasse Marine to a penalty of up to \$32,500 per day per violation for all violations occurring up to December 6, 2013, up to \$37,500 per day per violation for all violations occurring after December 6, 2013 through November 2, 2015, and up to \$52,414 for violations occurring after November 2, 2015. This means that the maximum potential penalty for the 1,840 days of numerical standard violations alone exceeds \$60,000,000.

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<sup>6</sup> Both the Sanitary Discharge permit and the Sewage Sludge permit contain the same standard conditions at Part III.



In addition to civil penalties, LEAN and LMR will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) of the Act, 33 U.S.C. § 1365(a), and requiring Belle Chasse Marine to remediate any damage to the Mississippi River. Finally, LEAN and LMR will seek to recover costs and fees associated with this action, including attorneys' fees, as allowed for prevailing parties under Section 505(d) of the Act, 33 U.S.C. § 1365(d).

## **VI. Conclusion**

LEAN and LMR hope Belle Chasse Marine will take prompt action to remedy the violations identified in this notice letter, and will meet with Belle Chasse Marine to further discuss methods of compliance and answer any questions Belle Chasse Marine may have. Please direct all correspondence to the undersigned counsel, via the address and telephone number below.

Sincerely,



Robert Wiygul  
1011 Iberville Dr.  
Ocean Springs, MS 39564  
Phone: (228) 872-1125

cc: **Certified Mail & Return Receipt Requested**  
Jeff Sessions, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**Certified Mail & Return Receipt Requested**  
Scott Pruitt, EPA Administrator  
Environmental Protection Agency  
Office of the Administrator, 1101A  
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**Certified Mail & Return Receipt Requested**  
Samuel Coleman, EPA Region VI, Acting Regional Administrator  
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**Certified Mail & Return Receipt Requested**  
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P.O. Box 4301  
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